



Massachusetts Housing Finance Agency
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January 16, 2024

Robert Murchison
177 Lake Street
Sherborn, MA 01770

**Re: Brush Hill Homes
Project Eligibility/Site Approval
MassHousing ID No. 1199**

Dear Mr. Murchison:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (“Site Approval”) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Executive Office of Housing and Livable Communities (“EOHLC”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBank Boston”).

Fenix Partners Brush Hill, LLC has submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build eight (8) homeownership units (the “Project”) on approximately 5.1 acres of land located on Brush Hill Road (the “Site”) in Sherborn (the “Municipality”).

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing has performed an on-site inspection of the Site and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Comments

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. At the request of the Municipality, this time was extended an additional 30 days, for a total of 60 days. The Sherborn Select Board submitted a letter generally supporting the proposed Project, noting that the development is consistent with the goals and recommendations of Sherborn’s Master Plan and Housing Production Plan. The following comments and concerns were identified in the letter:

- The Municipality commends the Applicant for the incorporation of carbon-neutral features into the proposed Project and requested information on opportunities for solar panel installation on rooftops.
- The Municipality noted that the clustered arrangement of the proposed homes is a positive feature of the proposed Project, as it allows for a significant portion of the property to remain undisturbed. The Municipality encouraged tree removal to be minimized.
- The Municipality is concerned with potential impacts to groundwater quality in the vicinity of the Site, including impacts to neighboring wells due to the number of wells proposed for the Site.

Community Comments

MassHousing received several letters from area residents, all of which expressed concerns with the proposed development. While letters from members of the community echoed the concerns identified by the local officials, the letters received are summarized below:

- Area residents believe the proposed development will impact the well water throughout the existing neighborhood.
- Area residents expressed concern that the proposed development may result in an increase in traffic volume and delays throughout the area. Further, area residents are concerned that the road width throughout the existing neighborhood may result in unsafe conditions for residents.

MassHousing Determination and Recommendation

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval.¹ As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Applicant may apply to the Zoning Board of Appeals (“ZBA”) for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing’s site and design review, and considering feedback received from the Municipality, the following issues should be addressed in the application to the ZBA, and the Applicant should be prepared to explore them more fully during the public hearing process:

- Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project. To the

¹ MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

extent feasible, the Applicant should engage with the Municipality to discuss the Project's ability to meet local wastewater standards.

- The Applicant should be prepared to discuss compliance with all applicable state regulations regarding groundwater quality and public health.
- The Applicant should continue to engage with the Municipality in a good-faith effort regarding design review and other site-related matters, including the installation of solar panels.
- The Applicant is encouraged to maintain as many existing trees on the Site as possible.
- The Applicant should be prepared to discuss potential impacts of the proposed Project on stormwater and water resources in Town, and respond to reasonable requests for mitigation.

MassHousing has also reviewed the application for compliance within the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than eight (8) homeownership units under the terms of the Program, of which not less than two (2) of such units shall be restricted as affordable for low- or moderate-income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a comprehensive permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a “final draft” of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Michael Busby at (617) 854-1219.

Sincerely,

A handwritten signature in blue ink, appearing to read "Colin M. McNiece".

Colin M. McNiece
General Counsel

cc: Ed Augustus, Secretary, EOHLC
The Honorable Rebecca L. Rausch
The Honorable James C. Arena-DeRosa
Jeff Waldron, Chair, Select Board
Richard S. Novak, Chair, Zoning Board of Appeals
Jeremy Marsette, Town Administrator

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

Brush Hill Homes, Sherborn, MA #1199

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development ("HUD"). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sherborn is \$118,450.

The Applicant submitted a letter of financial interest from Fidelity Bank, a member bank of the FHLBank Boston under the NEF Program.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses and would address the local need for housing.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality's actions intended to meet affordable housing needs. MassHousing has reviewed the information provided by the Municipality describing previous municipal actions intended to provide affordable housing. Specific examples undertaken by the Municipality include:

- The Town of Sherborn has a Housing Production Plan (HPP) originally approved by EOHLG in 2016 and recently updated and re-approved in May 2022. Furthermore, Sherborn's 2019 Master Plan recommends strategies and actions for diverse affordable housing options in line with the HPP.
- In 2018, Town Meeting approved a zoning bylaw change that encourages accessory apartment units in single-family homes or farms.
- In 2020, Town Meeting approved an inclusionary zoning bylaw that requires 15% affordable units when building two or more units.

- The Town of Sherborn established an Affordable Housing Trust in 2020 to manage funds generated by the inclusionary zoning bylaw and other affordable housing investments by the Town.
- The Town of Sherborn recently approved a Comprehensive Permit for a 120-unit Local Initiative Project that would access MWRA water & sewer from Framingham. However, the project is currently on hold pending required applications, approvals, and negotiations (MWRA approvals, inter-municipal agreements with Framingham, legislative approval, as well as developer commitments).

MassHousing commends the Municipality's progress towards creating a range of diverse housing options to meet its affordable housing needs, however, according to EOHLC's Chapter 40B Subsidized Housing Inventory, updated through November 10, 2023, Sherborn has 48 Subsidized Housing Inventory (SHI) units (3.10% of its housing inventory), which is 107 units short of the statutory minima of 10%.

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

In summary, based on evaluation of the site plan using the following criteria, MassHousing finds that the proposed conceptual Project design is generally appropriate for the Site. The following plan review findings are made in response to the conceptual plan, submitted to MassHousing:

Relationship to Adjacent Building Typology (Including building massing, site arrangement, and architectural details)

The Brush Hill Homes proposal includes two designs of three- and four-bedroom homes with 2.5 and 3.5 baths to help address the needs of a range of household types and income levels. At 1,670 and 2,560 square feet, these homes are a more modest scale and therefore more financially achievable than most homes in the neighborhood. Both designs have first floor bedrooms and generous office/den space for remote work opportunities. Each home is 1.5 to 2 stories in height, including pitched roofs, detailing, and materials in keeping with the traditional, residential, New England character of the surrounding community. All homes include front porches that face the shared walks and green spaces of the neighborhood, helping foster a sense of community between residents. All homes include a two-car garage, with most types having their parking accessed by shared rear parking lanes that help minimize the presence of parked cars and garage doors from the common areas. The garage doors are carriage style to enhance the facades. Windows, trim details, and front-facing gables are used to break up large areas of the elevations.

Relationship to adjacent streets/Integration into existing development patterns

The Site is on the southern edge of Middlesex County between three growing metropolitan areas: Boston is eighteen miles northeast, Worcester is twenty-two miles west, and Providence is thirty miles south. Five miles long from north to south, and four miles from east to west, Sherborn has an area of about sixteen square miles, or 10,328 acres. Three state numbered routes run through town (Routes 16, 27, & 115) and carry commuter and commercial traffic to the larger commercial centers outside of town. The Town has open fields lined with stonewalls and single-family homes throughout defining Sherborn's character.

Density

The Applicant proposes to build eight (8) homeownership units on approximately 5.1 acres, of which, all are buildable. The resulting density is 1.56 units per buildable acre, which is acceptable given the proposed housing type.

Conceptual Site Plan

Water supply for Brush Hill Homes will be provided by three private wells sited about 200 feet apart along the back property line, which is contiguous with town conservation land. Each well will be owned and maintained by a group of three homes (one of the three wells will be owned by only two homes).

Regarding natural and open space elements in the Project, the Applicant proposes to keep most of the area from the internal driveways to the property lines on three sides natural and wooded. The front right corner will be cleared and used for our septic area and likely an area for light recreational activities. While the septic area described will need to be filled and leveled off, the Applicant is hopeful that it can work more with the natural grade in the areas of the homes. The landscape design is intended to create the visual appeal of an old-fashioned, walkable, New England village with front walks, street trees, privacy trees, and decorative shrubbery and fencing.

Topography

The Site is generally level with similar elevations throughout the Site. The topographic features of the Site have been considered in relationship to the proposed Project plans and do not constitute an impediment to development of the Site.

Environmental Resources

Based on MassHousing's site inspection, and information provided by the Applicant, no significant natural or cultural resources, endangered species habitat, or areas prone to flooding have been identified on the Site. The absence of these potential constraints suggests that the Site is generally appropriate for residential development and use.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Project appears financially feasible based on a comparison of sales submitted by the Applicant.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

The initial pro forma has been reviewed for the proposed residential use, and the Project appears financially feasible with a projected profit margin of 11.83%. In addition, a third-party appraisal commissioned by MassHousing has determined that the "As Is" land value for the Site of the proposed Project is \$350,000.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

MassHousing finds that the Applicant must be organized as a Limited Dividend Organization.

MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant controls the entire Site by virtue of a deed from the Estate of James A. Trombi to Fenix Partners Brush Hill, LLC dated August 15, 2023. The deed is recorded at the Middlesex South County Registry of Deeds in Book 81892 Page 265.